

Internal Revenue Service

NO PROTEST RECEIVED
Department of the Treasury to District

Washington, DC 20224

Date 11/20/88

Surnames [REDACTED]

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to:

OP:E:EO:T:2

Date:

OCT - 9 1988

DO: [REDACTED]

EIN: [REDACTED]

Dear Applicant:

This is in regards to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

You were established in [REDACTED] to maintain and operate a farm, previously owned and operated by [REDACTED]. In [REDACTED] your trust instrument was amended to include the various clauses needed to satisfy the organizational test set forth in section 1.501(c)(3)-1(b) of the Income Tax Regulations. These amendments also require your Trustees to continue to operate [REDACTED] for gain and use the assets of the trust to continue [REDACTED] practices and to maintain [REDACTED] as open land. You have represented [REDACTED] is to be given to [REDACTED] when you terminate. However, it does not appear that you have any immediate plans to cease the commercial operation of [REDACTED] because your trust agreement is not to be terminated until [REDACTED].

Your primary activity is to operate [REDACTED] and [REDACTED] for sale. You have indicated that [REDACTED] and [REDACTED] will be sold to the general public at market price. The property is open to the public as permitted for their own enjoyment. [REDACTED] is subject to a [REDACTED]. This restriction requires the land to be used exclusively for [REDACTED]. However, the primary purpose of the act is to provide for a lesser assessed valuation of the land which lowers real estate taxes. Although your trustees work [REDACTED] they do not reside on the property. Your trust instrument provides that your trustees can be paid reasonable compensation. You have represented that none of your trustees are related to the trustor who is now dead. You do not carry on any educational program.

Section 501(a) of the Code provides, in part, for the exemption from federal income tax of organizations described in section 501(c)(3) of the Code.

Section 501(c)(3) of the Code describes organizations organized and operated exclusively for religious, charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in that section. If an organization does not meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. It includes relief of the poor and distressed, the advancement of religion, the advancement of education and lessening the burdens of government.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common and its profits do not inure to the benefit of individual members of the organization.

Section 508(a)(2) of the Code states that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) for any period before giving notice that it is applying for recognition of exempt status, if such notice is given after the time prescribed in the regulations.

Section 1.508-1(a)(2)(i) of the Income Tax Regulations states that an organization seeking exemption under section 501(c)(3) of the Code must file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized. Such notice is filed by submitting a properly completed and executed Form 1023 exemption application with the key District Director.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct.D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In B.S.W. Group, Incorporated v Commissioner, 70 T.C. 352, the court held that an organization which operated at a profit whose only role is that of a conduit linking individual researchers with interested client organizations, both exempt and nonexempt, did not qualify for exemption under section 501(c)(3) of the Code. It was conducting a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit and not engaging in a recognized section 501(c)(3) exempt activity.

It is incumbent upon an organization seeking a ruling recognizing its tax exempt status to carry the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc. v. United States, *supra*.

Although, section 1.501(c)(3)-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt

Re: [REDACTED]
[REDACTED]

purpose or purposes, where the business activities do not directly further the exempt section 501(c)(3) purposes, exemption will be denied. See B.S.W. Group, Incorporated v Commissioner, supra. The presence of nonexempt activities, if more than insubstantial will preclude exemption. See Better Business Bureau of Washington, D.C., Inc. v. United States, supra.

The information you have submitted indicates that you will be operating [REDACTED] in a commercial manner. There is no information in the file pertaining to the distribution of any profits which might be earned through these endeavors. You have indicated that [REDACTED] will be open to the general public but that they must seek permission to enter. Inasmuch as [REDACTED] is your primary activity it would appear that public accessibility will be limited to enable [REDACTED] to be efficiently managed. You have indicated that the land has restrictions placed upon it and it will ultimately be distributed to a recognized section 501(c)(3) charity. However, your primary activity is to operate [REDACTED] in a commercial manner and these above mentioned statutory restrictions merely conserve the property as [REDACTED].

Accordingly, we have concluded that you do not qualify for recognition of exemption under section 501(c)(3) of the Code because your primary purpose is to operate [REDACTED]. Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

In addition, even if we could conclude that you qualified for exemption under section 501(c)(3), exemption would only be effective the date your application was filed with the Service. Our records indicate that your Form 1023 was filed with the Service on May 12, 1998, which is more than 15 months from the end of the month in which you were organized. See section 1.508-1(a)(2)(i) of the Regulations.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11-11-2010 BY 60322 UCBAW/SJS

[REDACTED]

If you do not protest this proposed ruling in a timely manner, it will be considered by the Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the U.S. Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc: [REDACTED]

cc: [REDACTED]

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[REDACTED]

[REDACTED]